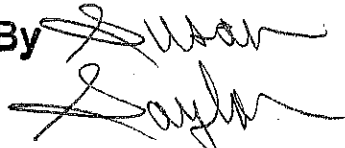


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FILED

Date 7/26/13 By 

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2014-8

**IDEAL FUMIGATION, INC.; JUAN
FRANCISCO TEJEDA, QUALIFYING
MANAGER; ERNESTO LARA PEREZ;
MARTHA PEREZ**
11100 Wright Road
Lynwood, CA 90262
Company Registration No. PR 3438
Branch Office Registration No. BR 4934,

ACCUSATION

ERNESTO LARA PEREZ
11100 Wright Road
Lynwood, CA 90262
Operator License No. OPR 11128, Branch 1
Field Representative License No. FR 43416,
Branch 3,

and

JUAN FRANCISCO TEJEDA
11100 Wright Road
Lynwood, CA 90262
Operator License No. OPR 10008, Branch 1

Respondents.

1 Complainant alleges:

2 **PARTIES**

3 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as
4 the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of
5 Consumer Affairs.

6 2. On or about April 10, 1999, the Structural Pest Control Board issued Company
7 Registration Number PR 3438 in Branch 1 to Ideal Fumigation, Inc.; Juan Francisco Tejada;
8 Ernesto Lara Perez; Martha Perez (Respondents). The Company Registration was in full force
9 and effect at all times relevant to the charges brought herein.

10 3. On or about April 14, 2003, the Structural Pest Control Board issued Branch Office
11 Registration Number BR 4934 in Branch 1 to Ideal Fumigation, Inc.; Juan Francisco Tejada;
12 Ernesto Lara Perez; Martha Perez (Respondents).

13 4. On or about June 16, 2005, the Structural Pest Control Board issued Operator's
14 License Number OPR 11128, Branch 1, to Ernesto Lara Perez (Respondent Perez). The
15 Operator's License was in full force and effect at all times relevant to the charges brought herein
16 and will expire on June 30, 2016, unless renewed.

17 5. On or about July 30, 2008, the Structural Pest Control Board issued Field
18 Representative's License Number FR 43416, Branch 3, to Ernesto Lara Perez (Respondent
19 Perez). The Field Representative's License was in full force and effect at all times relevant to the
20 charges brought herein and will expire on June 30, 2014, unless renewed.

21 6. On or about April 5, 1999, the Structural Pest Control Board issued Operator's
22 License Number OPR 10008, Branch 1, to Juan Francisco Tejada (Respondent Tejada). The
23 Operator's License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on June 30, 2016, unless renewed.

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1 for which a company registration is required, shall give a copy of this 'Notice to Owner' to the
2 owner, his or her agent, or the payer."

3 11. Section 8514 of the Code provides, in pertinent part, that no registered company shall
4 commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or
5 statement relating to the control of household pests, or wood destroying pests or organisms until
6 an inspection has been made. Nothing herein contained shall permit or authorize a registered
7 company to perform, attempt to perform, advertise or hold out to the public or to any person that
8 it is authorized, qualified, or registered to perform, pest control work in a branch, or by a method,
9 for which it is not registered.

10 12. Section 8538 of the Codes states:

11 "(a) A registered structural pest control company shall provide the owner, or owner's agent,
12 and tenant of the premises for which the work is to be done with clear written notice which
13 contains the following statements and information using words with common and everyday
14 meaning:

15 (1) The pest to be controlled.

16 (2) The pesticide or pesticides proposed to be used, and the active ingredient or ingredients.

17 (3) 'State law requires that you be given the following information: CAUTION--
18 PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and
19 regulated by the Structural Pest Control Board, and apply pesticides which are registered and
20 approved for use by the California Department of Pesticide Regulation and the United States
21 Environmental Protection Agency. Registration is granted when the state finds that, based on
22 existing scientific evidence, there are no appreciable risks if proper use conditions are followed or
23 that the risks are outweighed by the benefits. The degree of risk depends upon the degree of
24 exposure, so exposure should be minimized.

25 If within 24 hours following application you experience symptoms similar to common
26 seasonal illness comparable to the flu, contact your physician or poison control center (telephone
27 number) and your pest control company immediately.' (This statement shall be modified to
28 include any other symptoms of overexposure which are not typical of influenza.)

1 'For further information, contact any of the following: Your Pest Control Company
2 (telephone number); for Health Questions--the County Health Department (telephone number);
3 for Application Information--the County Agricultural Commissioner (telephone number) and for
4 Regulatory Information--the Structural Pest Control Board (telephone number and address).'

5 (4) If a contract for periodic pest control has been executed, the frequency with which the
6 treatment is to be done.

7 (b) In the case of Branch 1 applications, the notice prescribed by subdivision (a) shall be
8 provided at least 48 hours prior to application unless fumigation follows inspection by less than
9 48 hours.

10 In the case of Branch 2 or Branch 3 registered company applications, the notice prescribed
11 by subdivision (a) shall be provided no later than prior to application.

12 In either case, the notice shall be given to the owner, or owner's agent, and tenant, if there is
13 a tenant, in at least one of the following ways:

14 (1) First-class mail.

15 (2) Posting in a conspicuous place on the real property.

16 (3) Personal delivery.

17 If the building is commercial or industrial, a notice shall be posted in a conspicuous place,
18 unless the owner or owner's agent objects, in addition to any other notification required by this
19 section.

20 The notice shall only be required to be provided at the time of the initial treatment if a
21 contract for periodic service has been executed. If the pesticide to be used is changed, another
22 notice shall be required to be provided in the manner previously set forth herein.

23 (c) Any person or licensee who, or registered company which, violates any provision of this
24 section is guilty of a misdemeanor and is punishable as set forth in Section 8553."

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1 13. Section 8550, subdivision (e) of the Codes provided, in pertinent part, that it is
2 unlawful for any firm, sole proprietorship, partnership, corporation, association, or other
3 organization or combination thereof to engage or offer to engage in the practice of structural pest
4 control, unless registered in accordance with Article 6 (commencing with Section 8610).

5 14. Section 8651 of the Code states:

6 “The performing or soliciting of structural pest control work, the inspecting for structural or
7 household pests, or the applying of any pesticide, chemical, or allied substance for the purpose of
8 eliminating, exterminating, controlling, or preventing structural pests in branches of pest control
9 other than those for which the operator, field representative, or applicator is licensed or the
10 company is registered is a ground for disciplinary action.”

11 15. Section 8652 of the Code states:

12 “Failure of a registered company to make and keep all inspection reports, field notes,
13 contracts, documents, notices of work completed, and records, other than financial records, for a
14 period of not less than three years after completion of any work or operation for the control of
15 structural pests or organisms, is a ground for disciplinary action. These records shall be made
16 available to the executive officer of the board or his or her duly authorized representative during
17 business hours.”

18 16. Section 8624 of the Code states:

19 “If the board suspends or revokes an operator’s license and one or more branch offices are
20 registered under the name of the operator, the suspension or revocation may be applied to each
21 branch office.

22 If the operator is the qualifying manager, a partner, responsible officer, or owner of a
23 registered structural pest control company, the suspension or revocation may be applied to the
24 company registration.

25 The performance by any partnership, corporation, firm, association, or registered company
26 of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for
27 disciplinary action against any licensee who, at the time the act or omission occurred, was the
28 qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm,

1 association, or registered company whether or not he or she had knowledge of, or participated in,
2 the prohibited act or omission.”

3 4 **REGULATORY PROVISIONS**

5 17. California Code of Regulations, title 16, section 1937.16 states:

6 “The ‘Notice to Owner’ form to be used by branch 1 and branch 3 registered companies in
7 accordance with Section 8513 of the code shall be that set forth below.

8 9 10 **NOTICE TO OWNER**

11 Under the California Mechanics Lien Law any structural pest control company which
12 contracts to do work for you, any contractor, subcontractor, laborer, supplier or other person who
13 helps to improve your property, but is not paid for his or her work or supplies, has a right to
14 enforce a claim against your property. This means that after a court hearing, your property could
15 be sold by a court officer and the proceeds of the sale used to satisfy the indebtedness. This can
16 happen even if you have paid your structural pest control company in full if the subcontractor,
17 laborers or suppliers remain unpaid.

18 To preserve their right to file a claim or lien against your property, certain claimants such as
19 subcontractors or material suppliers are required to provide you with a document entitled
20 “Preliminary Notice.” Prime contractors and laborers for wages do not have to provide this
21 notice. A Preliminary Notice is not a lien against your property. Its purpose is to notify you of
22 persons who may have a right to file a lien against your property if they are not paid.”

23 18. California Code of Regulations, title 16, section 1970.4, subdivision (a) states:

24 “(a) The primary contractor for fumigation shall have in his or her possession and shall
25 provide to any subcontractor for fumigation a form (See Form 43M-48 (Rev. 5/07) at the end of
26 this section) signed by the occupants or designated agent of a structure. The primary contractor
27 for fumigation and the subcontractor for fumigation shall retain a copy of the occupants’
28 fumigation notice for a period of at least three (3) years. In case of multiple-family dwellings, the

owner, manager or designated agent of the building may obtain signatures and/or verify the notification of the occupants.

The form shall state the name of the pest to be controlled, the pesticide(s)/fumigant(s) proposed to be used, the active ingredient(s) and the health cautionary statement as required under section 8538 of the code. The form shall also state that a lethal gas (poison) will be used in the building on indicated dates and that it is unsafe to return to the building until a certification notice for reentry is posted by the licensed fumigator. The form shall also indicate that the occupant has received the prime contractor's information regarding the procedures for leaving the structure.

The properly signed form or a copy thereof shall be in the possession of the licensed fumigator when the fumigant is released. Such form shall be attached to and become a permanent part of the fumigation log upon completion of the fumigation."

19. California Code of Regulations, title 16, section 1970 states, in pertinent part, that for the purpose of maintaining proper standards of safety and the establishment of responsibility in handling the dangerous gases used in fumigation and the pesticides used in other pest control operations, a registered company shall compile and retain for a period of at least three years, a log for each fumigation job and for each pesticide control operation in which a pesticide is used by the registered company or the registered company's employee. If the fumigation is to be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log and forward a copy of the log to the primary contractor within ten business days.

BACKGROUND FACTS

20. On or around July 30, 2012, Respondents fumigated a residential property located at 1103 N. Teakwood Avenue, Rialto, CA (Teakwood Property) as the prime contractor.

21. Respondents, a Branch 1 company, treated the Teakwood Property for "dry wood termites" using Vikane, a gas fumigant.

22. Prior to performing the fumigation for the Teakwood Property, Respondents failed to obtain a termite inspection report.

1 23. Respondents subsequently failed to provide a termite inspection report or any
2 pertinent documentation relating to the contract, when requested by the Board.

3 24. On or around August 4, 2012, Respondents fumigated a residential property located at
4 1025 Whistle Stop Drive, Colton, CA (Whistle Stop Property) as the prime contractor.

5 25. Respondents, a Branch 1 company, treated the Whistle Stop Property for "dry wood
6 termites" using Vikane, a gas fumigant.

7 26. Prior to performing the fumigation for the Whistle Stop Property, Respondents failed
8 to obtain a termite inspection report.

9 27. Respondents subsequently failed to provide a termite inspection report or any
10 pertinent documentation relating to the contract, when requested by the Board.

11 28. On or around September 11, 2012, a Board Specialist performed an unannounced
12 inspection of Respondents' office and requested all subcontractor agreements, fumigation logs
13 where Respondents were identified as a prime contractor, occupant fumigation notices, pesticide
14 disclosures, employee and business licenses, certifications and billing with any mechanics' lien
15 notices to consumers, to be produced by September 20, 2012.

16 29. On or around September 20, 2012, the Board Specialist interviewed Respondents.

17 30. During the interview, Respondents admitted that Ideal Fumigation, Inc. "regularly
18 fumigates [termite] jobs without a prime contractor for family, friends, and people that cannot
19 afford to pay for a termite inspection."

20 31. Respondents admitted they did not possess documentation for at least nineteen (19)
21 properties identified on Respondents' daily printout schedule.

22 32. Respondents admitted they did not possess documentation for eighty-five (85)
23 completed jobs from identifiable daily job schedules.

24 33. Respondents produced fifteen (15) fumigation logs which identified Respondents as
25 the prime contractor but produced no additional documentation for any of the jobs.

26 34. Respondents produced four (4) fumigation logs where there was a previous termite
27 inspection report performed by a Branch 3 registered company, however Respondent failed to use
28 those reports prior to commencing fumigation.

35. Respondent produced twenty-two (22) fumigation logs with occupant's notices which identified Respondents as the prime contractor, but produced no additional documentation for any of the jobs.

36. On or around June 21, 2013 Respondents fumigated Tacos El Tejado, a food truck using a CB 580 fogger with pyrethrin, which required a Branch 2 registration.

FIRST CAUSE FOR DISCIPLINE

(Improperly Advertising for Unregistered Pest Control Services)

37. Respondents are subject to disciplinary action under Code sections 8620 and 8514 in that Respondents attempted to perform, advertised and held themselves out to the public that Respondents were authorized, qualified, or registered to perform pest control work in a branch for which Respondents were not registered. Complainant incorporates by reference paragraphs 20 – 36 above, as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Notice to Owner of Rights and Responsibilities)

38. Respondents are subject to disciplinary action under Code sections 8620 and 8513 in conjunction with Cal. Code of Regs. section 1937.16 in that Respondents failed to provide notice prior to entering into a contract with an owner for work in which a company registration is required. Complainant incorporates by reference paragraphs 20 – 35 above, as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Obtain a WDO Pests or Organisms Report)

39. Respondents are subject to disciplinary action under Code sections 8620 and 8514 in that Respondents commenced work on a contract relating to the control of household pests, or wood destroying pests or organisms without an inspection being performed in advance. Complainant incorporates by reference paragraphs 20 – 35 above, as if fully set forth herein.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure to Provide Notice to Owner of Pest Control Services)

3 40. Respondents are subject to disciplinary action under Code sections 8620 and 8538 in
4 conjunction with Cal. Code of Regs. section 1970.4, subdivision (a), in that Respondents failed
5 to provide the required notice to the owner, owner's agent and tenant of the pest to be controlled,
6 the pesticides proposed to be used, etc., as set forth pursuant to these sections. Complainant
7 incorporates by reference paragraphs 20 – 35 above, as if fully set forth herein.

8
9 **FIFTH CAUSE FOR DISCIPLINE**

10 (Performing Unlicensed/Unregistered Pest Control Services)

11 41. Respondents are subject to disciplinary action under Code sections 8620, 8550 and
12 8651 in that Respondents performed or solicited pest control services in branches of pest control
13 other than those for which the Respondents are licensed or the company is registered.
14 Complainant incorporates by reference paragraphs 20 – 36 above, as if fully set forth herein.

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16 **SIXTH CAUSE FOR DISCIPLINE**

17 (Failure to Maintain Records)

18 42. Respondents are subject to disciplinary action under Code sections 8620 and 8652 in
19 that Respondents failed to maintain records. Complainant incorporates by reference paragraphs
20 31 – 35 above, as if fully set forth herein.

21
22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Structural Pest Control Board issue a decision:

25 1. Revoking or suspending Company Registration Number PR 3438, issued to Ideal
26 Fumigation, Inc.; Juan Francisco Tejeda; Ernesto Lara Perez; Martha Perez

27 2. Revoking or suspending Branch Office Registration Number BR 4934, issued to Ideal
28 Fumigation, Inc.; Juan Francisco Tejeda; Ernesto Lara Perez; Martha Perez;

1 3. Revoking or suspending Operator License Number OPR 11128, Branch 1, issued to
2 Ernesto Lara Perez;


3 4. Revoking or suspending Field Representative License Number FR 43416, Branch 3,
4 issued to Ernesto Lara Perez;

5 5. Revoking or suspending Operator License Number OPR 10008, Branch 1, issued to
6 Juan Francisco Tejada;

7 6. Ordering Ideal Fumigation, Inc., Ernesto Lara Perez and Juan Francisco Tejada to pay
8 the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
9 case, pursuant to Business and Professions Code section 125.3;

10 7. Taking such other and further action as deemed necessary and proper.
11
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13 DATED: 7/26/13


SUSAN SAYLOR
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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